

# State of Colorado



Bill Owens  
*Governor*

Stacy L. Worthington  
*Board Director*

## DPA

Department of Personnel  
& Administration

State Personnel Board  
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### Meeting Minutes July 15, 2003

The State Personnel Board met in public session on Tuesday, July 15, 2003, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Chair Joyce Lottner at approximately 9:00 a.m. In addition to Ms. Lottner, Board members Elizabeth Salkind, Linda Siderius, and John Zakhem were present; Diedra Garcia arrived at approximately 9:15 a.m.

Stacy L. Worthington, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, Legal Assistant, were also present. Board Counsel arrived at approximately 9:10 a.m.

### **ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2003 – 2004**

Mr. Zakhem moved and nominated Ms. Lottner for Chair of the Board for Fiscal Year 2003-2004. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent for this portion of the meeting.

Ms. Siderius moved and nominated Mr. Zakhem for Vice Chair of the Board for Fiscal Year 2003-2004. Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent for this portion of the meeting.

#### **I. REQUESTS FOR RESIDENCY WAIVERS**

##### **A. July 1, 2003 Report on Residency Waivers**

There were no residency waiver requests during the time period.

## **II. PENDING MATTERS**

- A. Petition for Declaratory Order of Michael D. Griego, State Personnel Board case number 2003D005.

Ms. Siderius moved to deny the petition for declaratory order. Before voting, the Board considered the following matters, among others: whether a declaratory order will clarify the applicability of statute or Board rule or order to the petitioner; whether a declaratory order will terminate the uncertainty or controversy giving rise to the petition; and whether the petitioner has another remedy or avenue for review of the controversy. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem. Ms. Lottner voted in opposition to the motion.

## **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. Andre Smith v. Regents of the University of Colorado at Denver, Auraria Higher Education Center, State Personnel Board case number 2003B042(C).

After a discussion of burden of proof, Ms. Salkind moved to remand the matter to the Administrative Law Judge for rehearing on the basis that the burden of proof should not be shifted from one party to the other in the Initial Decision, after a ruling at hearing that the first party bore the burden of proof. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius abstained from voting.

## **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Albert McNeill v. Department of Labor and Employment, State Personnel Board case number 2003G065.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Director and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

- B. Lynn Michael, Sandy Henderson, Jaswant Kohli, Deborah Mitchell, Joseph Orndoff, Beverly Suazo, Sarah Williams, Glenna Davis, Dave Knopp, Anthony Bustamante, Joseph Mondragon, Gloria Smith and Rebecca Tygart v. Department of Labor and Employment, Unemployment Insurance, and Department of Personnel and Administration, State Personnel Board case number 2003G056.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Director and deny the petition for hearing. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Ms. Lottner. Ms. Siderius and Mr. Zakhem abstained from voting.

## **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

- A. Rodney A. Carbajal, Jr. v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2003B105.

On June 19, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary suspension for one week was not arbitrary, capricious or contrary to law. The ALJ ordered that Respondent's action is affirmed and Complainant's appeal dismissed with prejudice.

- B. Dan Wells and Barry Rice v. Department of Higher Education, University of Colorado at Denver, Auraria Media Center, Auraria Library and Auraria Higher Education Center, State Personnel Board case number 2002B092 (C).

On June 23, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's lay-off decision of Complainants' employment was not arbitrary, capricious or contrary to law. The ALJ found that Respondent University of Colorado at Denver's action is affirmed. Respondent Auraria Higher Education Center is ordered to appoint Complainant Rice to a Telecommunication/Electronic Specialist II position. Respondent AHEC is ordered to pay Complainant Rice back pay and benefits, with an offset for any unemployment compensation or other type of compensation received, from April 15, 2002 to the date of reinstatement. Attorney fees and costs are not awarded.

- C. Brandy Rogers v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2003B072.

On June 30, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary action of

termination is rescinded. Respondent is ordered to reinstate Complainant, with back pay and benefits to the date of termination and to pay Complainant's attorney fees and costs incurred in this actions.

## **VI. REVIEW OF THE MINUTES FROM THE JUNE 17, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Garcia moved to approve the minutes of the June 17, 2003 meeting as submitted. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius abstained because she was not present at that meeting.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 17, 2003 PUBLIC MEETING:**

- A. Michael Fowler v. Department of Higher Education, Trustees of the State College in Colorado, Western State College, State Personnel Board case number 2002B144.

The Board voted to adopt the findings of fact of the Administrative Law Judge, but to reverse conclusion of law #4 ("Complainant is entitled to an award of attorney fees and costs"). The Board found that Respondent's action was not groundless and that Complainant thus was not entitled to an award of attorney fees and costs.

- B. James Aragon v. Department of Corrections, State Personnel Board case number 2001G096.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

Director Worthington reported briefly on behalf of the Personnel Director, commenting that the Civil Service Reform Commission was continuing to hold meetings statewide.

## **IX. ADMINISTRATIVE MATTERS & COMMENTS**

### **A. ADMINISTRATIVE MATTERS**

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review

- Cases on Appeal to the Board and to Appellate Courts
- Mandate/Order Affirmed in Bellos v. Department of Regulatory Agencies, State Personnel Case No. 2000G094, Court of Appeals No. 02CA183

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

## **X. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the June 2003 Executive Session

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Having no more business, the meeting adjourned by consensus.

**APPROVED THIS 19th DAY OF AUGUST, 2003.**

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Joyce Lottner, Chair

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John Zakhem, Vice Chair

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Diedra Garcia, Member

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Elizabeth Salkind, Member

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Linda Siderius, Member